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## **HOUSING ELEMENT AND FAIR SHARE PLAN FOR NJ HIGHLANDS RMP CONFORMANCE MODULE 3**

### **TOWNSHIP OF MAHWAH BERGEN COUNTY, NEW JERSEY**

#### **PREPARED FOR:**

**TOWNSHIP OF MAHWAH PLANNING BOARD  
BA# 2225.02**

**May 12, 2010  
Adopted May 24, 2010**

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**The original document was appropriately signed and sealed on May 12, 2010 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.**

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## INTRODUCTION

In 1975 the New Jersey Supreme Court decided in So. Burlington Cty. NAACP v. Township of Mount Laurel (Mount Laurel I) that every developing municipality in New Jersey had an affirmative obligation to provide its fair share of affordable housing. In a subsequent decision in 1983 (Mount Laurel II), the Court acknowledged that the vast majority of municipalities in the State had ignored their constitutional obligation, and called for the State Legislature to enact legislation that would save municipalities from the burden of having the courts determine their affordable housing needs. The result was the establishment of the New Jersey Council on Affordable Housing (COAH), the state agency responsible for overseeing the manner in which the state's municipalities address their low- and moderate-income housing needs.

Mahwah Township was involved in one of the six cases which were part of the consolidated Mount Laurel II case. On remand in 1983, the Township entered into a Judgment of Repose to address its fair share housing obligation. This Judgment of Repose preceded COAH's first regulations which were published in 1986. COAH has adopted a number of reports identifying municipal affordable obligations beginning in 1986, as follows:

1. COAH initially adopted a "fair share" methodology to determine the state's low- and moderate-income housing needs in 1986. Their adopted first and second round housing-need numbers for Mahwah called for the Township to provide a total of 368 affordable housing units, inclusive of a new construction obligation of 350 units and a rehabilitation obligation of 18 units, between the years 1987 and 1999.

In April 1998, an order was issued by the New Jersey Superior Court, which terminated the court's jurisdiction over Mahwah's affordable housing activities. Mahwah's Second Round plan to address COAH's projected First and Second Round affordable housing needs was certified by COAH on July 1, 1998.

2. In December 2004, COAH adopted new substantive (N.J.A.C. 5:94) and procedural (N.J.A.C. 5:95) rules for the period beginning December 20, 2004. At that time, COAH re-adjusted all municipal first and second round housing-need new construction numbers and rehabilitation numbers. Mahwah's previously published 350 unit new construction obligation was reduced to 261 units, and the Township's rehabilitation component was reduced to three units. As detailed below, these housing-need numbers are substantially below that which Mahwah had imposed on them through Mt. Laurel litigation that commenced in the 1970s and resulted in the Judgment of Repose in 1983.
3. As a result of an Appellate Division ruling, the substantive and procedural rules were revised and again adopted on June 2, 2008 (now NJAC 5:97 and NJAC 5:96, respectively). COAH's new third round rules represent a significant departure from the Council's first and second round rules in that the new rules link the production of affordable housing with actual development and projected growth through the implementation of a "growth share" approach to affordable housing. There are three components to this third round methodology. They include the rehabilitation share, any remaining prior round obligation for the period 1987-1999, and the growth share. Growth share is generated by projections of residential and non-residential growth for the period covering January 1, 2004 to December 31, 2018. The new substantive rules state that for every four market-rate residential units

projected to be constructed, the municipality shall be obligated to provide one unit that is affordable to households of low- or moderate-income. In addition, each municipality is obligated to provide one affordable unit for every 16 newly created jobs. COAH's June 2008 proposed estimates of need indicate that Mahwah has a 1,177 Fair Share affordable housing obligation, inclusive of the 44 unit rehabilitation component, 350 unit prior round obligation and a 783 unit growth share component that is a function of projected residential and non-residential growth. (COAH estimates that by 2018 the Township will have an additional 1,262 dwellings in the community, which translates to 252.4 units of affordable housing, and 8,488 additional jobs, which translates to 530.5 units of affordable housing.)

4. Just after COAH released its new third round estimates, the Fair Housing Act was amended in July 2008 to create a responsibility for the Highlands Water Protection and Planning Council to identify and coordinate opportunities for affordable housing while preserving critical environmental resources within the Highlands Region. This was followed by Executive Order 114 in September 2008, which granted those municipalities participating in the Highlands Plan Conformance process an extension for third round petitions, from COAH's December 2008 deadline to December 8, 2009 (which was subsequently extended again to June 8, 2010).
5. Municipalities participating in the Highlands Plan Conformance process and conforming to the RMP have been given new affordable housing projections from the Highlands, for their Third Round growth share. The Highlands RMP-adjusted affordable housing growth share projection for Mahwah indicates the Township has a 72 affordable unit obligation.

As detailed herein, Mahwah's plan to address its affordable housing obligation is as follows:

- The Township's remaining 350 unit prior round obligation is to be addressed through credits from two existing affordable housing development. These projects, Society Hill and Ridge Gardens, account for a total of 350 affordable units;
- The Township's 72 unit growth share obligation is also addressed through credits from existing affordable housing developments, as described beginning on page 25 of this report. The analysis reveals that the Township will continue to have 202 excess credits after its reliance on the 350 units affordable units referenced above for the prior round and the 72 units being used to address the growth share obligation;
- Mahwah will continue to participate in the Bergen County Home improvement Program, and also utilize its development fees, to address its 44 unit rehabilitation obligation. A total of three units have been rehabilitated to-date

The details on how the obligation is determined and satisfied are provided in the body of this report.

**SECTION I**  
**HOUSING ELEMENT**

**1. COMMUNITY OVERVIEW**

Mahwah Township is the northwestern-most municipality in Bergen County, located along the state border with New York. It is bounded by New York's Rockland County to the north, the Boroughs of Ramsey, Upper Saddle River and Allendale to the east, Oakland and Franklin Lakes to the south, and Ringwood to the west.

Geographically, Mahwah is the largest municipality in Bergen County, occupying an area of 25.7 square miles (16,450 acres). This acreage includes a variety of physical features, ranging from the Ramapo Mountains in the area west of the Ramapo River and Route 202, to the rolling terrain and flatter lands that encompasses the easterly half of the community. The Township's unique environmental setting is exemplified by its location in the state's Highlands Region, an area encompassing eighty-eight municipalities in five counties governed by the Highlands Water Protection and Planning Act. The western portion of Mahwah is located within the Highlands Preservation Area, while the eastern portion is located in the Highlands Planning Area.

The Township is substantially a developed community. Its residential areas include mature, older areas that are characterized by a modest sized lot arrangement, newer conventional subdivisions with larger lots, and a significant number of attached residential developments that have been developed with an affordable housing component. This has enabled the Township to affirmatively address its low- and moderate-income housing obligations.

The community's population is presently at 24,172 residents, according to the most recently available statistics from the New Jersey Department of Labor and Workforce Development. In addition to its residential development, Mahwah has significant commercial and industrial areas distributed throughout the community along with a number of public properties. Ramapo College, a state college occupying more than 300 acres, is located along Ramapo Valley Road (Route 202). Three county parks, including the county's two largest parks, are also located within Mahwah. These include the Ramapo Valley Reservation, Campgaw Mountain, and the Darlington County Park. Ramapo Valley Reservation occupies nearly 1,100 acres in Mahwah.

Regional access to Mahwah is provided from a number of major arterials. Route 17 is a principal roadway in Mahwah that extends through Bergen County in a north-south direction into New York. Other major regional roadways in Mahwah include Interstate 287 and Route 202. In addition, the New York State Thruway and the Garden State Parkway are nearby.



## **2. RELATIONSHIP TO REGIONAL MASTER PLAN (RMP)**

The overriding policy of the Housing Element is to ensure provision of a variety of housing opportunities sufficient to address the needs of the community and the region, including the need for affordable housing, while at the same time respecting the density limits of the Highlands Element Land Use Plan, the resource constraints applicable to the Highlands Area, and the numerous other policies, goals and objectives set forth by the Township Master Plan.

In furtherance of Township efforts to ensure sound planning, this Plan incorporates the following goals and objectives with respect to future housing in the Highlands Area:

1. To the extent feasible, the zone plan will guide anticipated new residential development into compact, center-based projects incorporating a mix of housing types.
2. To provide a realistic opportunity for the provision of the municipal share of the region's present and prospective needs for housing for low- and moderate-income families.
3. To the maximum extent feasible, to incorporate affordable housing units into any new residential construction that occurs within the Highlands Area including any mixed use, redevelopment, and/or adaptive reuse projects.
4. To preserve and monitor existing stocks of affordable housing.
5. To reduce long term housing costs through:
  - a. The implementation of green building and energy efficient technology in the rehabilitation, redevelopment and development of housing. Recent innovations in building practices and development regulations reflect significant energy efficiency measures, and therefore cost reductions, through building materials, energy efficient appliances, water conservation measures, innovative and alternative technologies that support conservation practices, and common sense practices such as recycling and re-use.
  - b. The promotion of the use of sustainable site design, efficient water management, energy efficient technologies, green building materials and equipment, and retrofitting for efficiencies.
  - c. Maximizing the efficient use of existing infrastructure, through such means as redevelopment, infill and adaptive reuse.
6. To use a smart growth approach to achieving housing needs:
  - a. Use land more efficiently to engender economically vibrant communities, complete with jobs, houses, shopping, recreation, entertainment and multiple modes of transportation.
  - b. Support a diverse mix of housing that offers a wide range of choice in terms of value, type and location. In addition, seek quality housing design that provides adequate light, air, and open space.

- c. Target housing to areas with existing higher densities and without environmental constraints, within walking distance of schools, employment, services, transit and community facilities with sufficient capacity to support them.

### 3. INVENTORY OF MUNICIPAL HOUSING STOCK

This section of the housing element provides an inventory of the community's housing stock, as required by the Municipal Land Use Law. It details housing characteristics such as age, condition, purchase/rental value, and occupancy. It also details the number of affordable units available to low- and moderate-income households and the number of substandard housing units capable of being rehabilitated.

- a. Number of Dwelling Units. As shown in the table below, the Township's housing stock grew dramatically over the five decade period between 1960 and 2000. The rate of growth peaked in the 1980s, when the number of dwelling units increased by nearly 90 percent. During the 1990s, the housing stock increased by nearly one-third. Estimate between 2006 and 2008 suggest that Mahwah's housing stock has grown by 1.4 percent since 2000.

**Table 1**  
**Dwelling Units: 1960 to 2006-2008\***  
**Mahwah, New Jersey**

Year	Total Units	Change (#)	Change (%)
1960	2,113	--	--
1970	3,038	925	43.8
1980	3,823	785	25.8
1990	7,249	3,426	89.6
2000	9,577	2,328	32.1
2006-2008*	9,711	134	1.4

\* Average between January 2006- December 2008.

Sources: 2003 Bergen County Data Book, American Community Survey- 3 year estimates.

Table 2 provides additional detail regarding the tenure and occupancy of the Township's housing stock. As shown below, 80.5 percent of Township's housing stock was estimated to be owner occupied between 2006 and 2008, down slightly from 82 percent in 2000. Correspondingly, the number of vacant units was estimated to have increased between 2006 and 2008 by 3.8 percent from 2.5 percent in 2000.

**Table 2**  
**Housing Characteristics: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Category	2000		2006-2008*	
	No. Units	Percent	No. Units	Percent
Owner-Occupied Units	7,858	82.0	7,790	80.2
Renter-Occupied Units	1,482	15.5	1,549	16.0
Vacant Units	237	2.5	372	3.8
<b>Total Units</b>	<b>9,577</b>	<b>100.0</b>	<b>9,711</b>	<b>100</b>

\* Average between January 2006-December 2008.

Source: U.S. Census- 2000, American Community Survey- 3 year estimates.

- b. Housing Characteristics. The following tables provide information on the characteristics of the Township's housing stock, including data on the number of units in the structure and the number of bedrooms. As shown below, the housing stock is predominantly characterized by single family attached and detached structures. This category is noted to have increased slightly by 73 percent between 2006 and 2008 from 69.5 percent in 2000. The other types of housing stock categories have essentially remained the same except structures with 3 to 4 units. This category has noted a significant decreased from 4.0 percent in 2000 to estimated 1.2 percent between 2006 and 2008.

**Table 3**  
**Units in Structure: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Units in Structure	2000		2006-2008*	
	Number	Percent	Number	Percent
One Unit Detached	4,209	43.9	4,297	44.2
One Unit Attached	2,456	25.6	2,796	28.8
2 Units	228	2.4	182	1.9
3 to 4 Units	387	4.0	114	1.2
5 to 9 Units	686	7.2	648	6.7
10 or More	1,480	15.5	1,529	15.7
Other	131	1.4	145	1.5
<b>Total</b>	<b>9,577</b>	<b>100.0</b>	<b>9,711</b>	<b>100</b>

\* Average between January 2006-December 2008.

Source: U.S. Census -2000, American Community Survey-3 year estimates.

**Table 4**  
**Number of Bedrooms in Housing Units: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Bedrooms	2000		2006-2008*	
	Number	Percent	Number	Percent
None	137	1.4	84	0.9
One	1,306	13.6	1,025	10.6
Two	3,007	31.4	3,734	38.5
Three	2,606	27.2	2,445	25.1
Four	2,032	21.2	1,765	18.1
Five or More	489	5.1	658	6.8
<b>Total</b>	<b>9,577</b>	<b>100.0</b>	<b>9,711</b>	<b>100</b>

\* Average between January 2006- December 2008.

Source: U.S. Census-2000, American Community Survey- 3 year estimates.

- c. Housing Age. Approximately 60 percent of the Township's housing units were constructed between 1980 and 1999. Nearly 3 percent of Mahwah's housing stock was built 2000 or later.

**Table 5**  
**Year Structure Built**  
**Mahwah, New Jersey**

<b>Year Units Built</b>	<b>Units</b>	<b>Percent</b>
2005 or later	19	0.2
2000 to 2004	264	2.7
1990 to 1999	2,607	26.8
1980 to 1989	3,114	32.1
1970 to 1979	864	8.9
1960 to 1969	933	9.6
1950 to 1959	745	7.7
1940 to 1949	279	2.9
1939 or earlier	886	9.1
<b>Total</b>	<b>9,711</b>	<b>100.0</b>

Source: American Community Survey-3 year estimates.

- d. Housing Conditions. An inventory of the Township's housing conditions is represented in the following tables. Table 6 identifies the extent of overcrowding in the Township, represented by housing units with more than 1 occupant per room. The data indicates that the number of occupied housing units considered overcrowded has decreased since 2000, from 2 percent of all occupied units in 2000 to 0.7 percent of all occupied units between 2006 and 2008.

**Table 6**  
**Occupants Per Room, Occupied Housing Units: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

<b>Occupants Per Room</b>	<b>2000</b>		<b>2006-2008*</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
1.00 or less	9,153	98.0	9,271	99.3
1.01 to 1.50	107	1.1	68	0.7
1.51 or more	80	0.9	0	0
<b>Total</b>	<b>9,340</b>	<b>100.0</b>	<b>9,339</b>	<b>100</b>

\* Average between January 2006 and December 2008.

Source: U.S. Census- 2000, American Community Survey-3 year estimates.

Table 7 presents additional characteristics of housing conditions, including the presence of complete plumbing and kitchen facilities and the type of heating equipment used.

**Table 7**  
**Equipment and Plumbing Facilities: 1990 and 2000**  
**Mahwah, New Jersey**

Facilities	1990		2000	
	Number	Percent	Number	Percent
<b>Kitchen:</b>				
Lacking Complete Facilities	8	0.1	43	0.4
With Complete Facilities	7,241	99.9	9,534	99.6
<b>Plumbing:</b>				
Lacking Complete Facilities	7	0.1	19	0.2
With Complete Facilities	7,242	99.9	9,558	99.8
<b>Heating Equipment:</b>				
Standard Heating Facilities	6,781	99.7	9,322	99.8
Other Means, No Fuel Used	19	0.3	18	0.2

Source: U.S. Census, 1990 and 2000

- e. **Purchase and Rental Values.** The Township has seen a rise in purchase and rental housing prices between 1990 and 2000, as shown in the following tables. This reflects regional increases in housing prices. As shown below, the median gross rent for the Township's rental housing stock rose 23 percent between 1990 and 2000, from \$943 to \$1,160.

**Table 8**  
**Gross Rent of Specified Renter-Occupied Housing Units: 1990 and 2000**  
**Mahwah, New Jersey**

Value Range	1990		2000	
	Units	Percent	Units	Percent
Less than \$300	23	1.8	38	2.6
\$300 to \$399	70	5.5	11	0.7
\$400 to \$499	39	3.0	15	1.0
\$500 to \$599	27	2.1	28	1.9
\$600 to \$699	89	6.9	46	3.1
\$700 to \$749	18	1.4	65	4.4
\$750 to \$999	469	36.6	306	20.7
\$1,000 or more	522	40.7	862	58.2
No Cash Rent	24	1.9	110	7.4
<b>Total</b>	<b>1,281</b>	<b>100.0</b>	<b>1,481</b>	<b>100.0</b>
<b>Median Rent</b>	<b>\$943</b>		<b>\$1,160</b>	

Source: U.S. Census, 1990 and 2000

Table 9 below shows that whereas 23 percent of Mahwah's owner occupied units had a value of \$500,000 or more in 2000, over 51.3 percent of Mahwah's owner occupied units had value of \$500,000 or more between 2006 and 2008. The Township's median value of owner occupied units increased by 53 percent. From median value of \$334,100 in 2000 to median value of \$511,900 between 2006 and 2008.

**Table 9**  
**Value of Specified Owner-Occupied Housing Units: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Value Range	2000		2006-2008*	
	Units	Percent	Units	Percent
Less than \$50,000	47	0.8	57	0.7
\$50,000 to \$99,999	90	1.5	170	2.2
\$100,000 to \$149,999	303	5.1	198	2.5
\$150,000 to \$199,999	593	10.1	91	1.2
\$200,000 to \$299,999	1,508	25.6	367	4.7
\$300,000 to \$499,999	1,997	33.9	2,912	37.4
\$500,000 to 999,999	1,227	20.8	3,163	40.6
\$1,000,000 or more	131	2.2	832	10.7
<b>Total</b>	<b>5,896</b>	<b>100.0</b>	<b>7,790</b>	<b>100</b>
<b>Median Value</b>	<b>\$334,100</b>		<b>\$511,900</b>	

\* Average between January 2006 and December 2008.

Source: U.S. Census- 2000, American Community Survey- 3 year estimates.

- f. Number of Units Affordable to Low- and Moderate-Income Households. Based on the most current COAH regional income limits, the median household income for a three-person household in COAH Region 1, Mahwah's housing region comprising Bergen, Hudson, Passaic and Sussex Counties, is \$72,536. A three-person moderate-income household, established at no more than 80 percent of the median income, would have an income not exceeding \$58,029.

An affordable sales price for a three person moderate income household earning 80 percent of the median income, is estimated at approximately \$130,000. This estimate is based on the UHAC affordability controls outlined in N.J.A.C. 5:80-26.1. Approximately 7 percent of the Township's housing units were valued at less than \$150,000 in 2000, according to the Census data above. Approximately 2 percent were valued at less than \$100,000.

For renter occupied housing, an affordable monthly rent for a three person household is estimated at \$1,340. Approximately 34 percent of the Township's renter-occupied housing units in 2000 had a gross rent below \$1,000.

- g. Substandard Housing Capable of being Rehabilitated. COAH assigned Mahwah a rehabilitation share of 44 units which represents deficient housing units occupied by low- and moderate-income households which are not likely to experience "spontaneous rehabilitation." This item is further explained in the Fair Share Plan section of this document.

#### 4. POPULATION ANALYSIS

The MLUL requires that a Housing Element provide data on the Township's population, including population size, age and income characteristics.

- a. Population Size. As seen in the table below, the Township's population has experienced double-digit growth each decade between 1920 and 2000, rising to 24,062 in 2000. Since 2000, the rate of growth in Mahwah has declined. The 2006-2008 population estimates of 23,671 people provided by American Community Survey shows a 1.6 percent decline in population since 2000.

**Table 10**  
**Rate of Population Growth: 1920 to 2006-2008\***  
**Mahwah, New Jersey**

Year	Population	Population Change	Percent Change
1920	2,081	---	---
1930	3,536	1,455	69.9
1940	3,908	372	10.5
1950	4,880	972	24.9
1960	7,376	2,496	51.1
1970	10,800	3,424	46.4
1980	12,127	1,327	12.3
1990	17,905	5,778	47.6
2000	24,062	6,157	34.4
2006-2008*	23,671	-391	-1.6

\* Average between January 2006 and December 2008.

Sources: 2003 Bergen County Data Book, American Community Survey- 3 year estimates.

Data on births and deaths is shown in the following table. As shown, births have consistently outpaced deaths for the entire period below, suggesting that a portion of the Township's growth results from natural increase.

**Table 11**  
**Number of Births and Deaths: 1994-2005**  
**Mahwah, New Jersey**

Year	Births	Deaths	Difference
1994	360	111	249
1995	342	124	218
1996	336	104	232
1997	348	101	247
1998	349	98	251
1999	362	129	233
2000	310	114	196
2001	300	132	168
2002	330	124	206
2003	281	123	158
2004	247	142	105
2005	243	112	131
<b>Total</b>	<b>3,808</b>	<b>1,414</b>	<b>2,394</b>

Source: NJ Department of Health, Center for Health Statistics

- b. Age Characteristics. The Township's age characteristics are represented in the table below. The data indicates that there has been an increase in the relative population in all age cohorts above age 45. However, the data also indicates a decrease in the relative population in all age cohorts under age 45. Overall, Mahwah's median age decreased between 2000 and 2006-2008, from 37.3 to 39.9.

**Table 12**  
**Age Characteristics: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Age Group	2000		2006-2008*	
	Total	Percent	Total	Percent
Under 5	1,672	6.9	1,207	5.1
5-14	3,012	12.5	2,906	12.3
15-24	2,991	12.4	2,957	12.4
25-34	3,260	13.5	2,644	11.2
35-44	4,486	18.6	4,039	17.1
45-54	3,482	14.5	4,237	17.9
55-64	2,587	10.8	2,677	11.3
65-74	1,553	6.5	1,679	7.1
75-84	815	3.4	1,010	4.3
85+	204	0.8	315	1.3
<b>Total</b>	<b>24,062</b>	<b>100.0</b>	<b>23,671</b>	<b>100</b>
<b>Median Age</b>	<b>37.3</b>		<b>39.9</b>	

Average between January 2006 and December 2008.

Source: U.S. Census-2000, American Community Survey- 3 year estimates.

- c. Average Household Size. The average household size for the Township declined steadily since, 2003. The average household size between 2006 and 2008 was the lowest on record at 2.53 people per household.

**Table 13**  
**Average Household Size: 1970 to 2006-2008\***  
**Mahwah, New Jersey**

Year	Total Population	Number of Households	Household Size
1970	10,800	2,944	3.66
1980	12,127	3,721	3.25
1990	17,905	6,800	2.63
2000	24,062	9,340	2.57
2006-2008*	23,671	9,339	2.53

\*Average between January 2006 and December 2008

Source: 2003 Bergen County Data Book, American Community Survey- 3 year estimates.

- d. Household Income. Table 14 shows the detailed household income figures. As shown, approximately 62 percent of Township's total households had income less than \$100,000 in 1999. This number decreased by 10 percent between 2006 and 2008 estimate. Of the total households approximately 52 percent of Township's total households had income less than \$100,000 between 2006 and 2008. The Township's median household income was approximately 3 percent lower than County's median household income.



**Table 14**  
**Household Income: 1999 and 2006-2008\***  
**Mahwah, New Jersey**

Income Category	1999		2006-2008*	
	Total	Percent	Total	Percent
Less than \$10,000	298	3.2	106	1.1
\$10,000 to \$14,999	216	2.3	148	1.6
\$15,000 to \$24,999	465	5	485	5.2
\$25,000 to \$34,999	575	6.1	534	5.7
\$35,000 to \$49,999	1,113	11.9	697	7.5
\$50,000 to \$74,999	1,727	18.5	1,361	14.6
\$75,000 to \$99,999	1,398	14.9	1,475	15.8
\$100,000 to \$149,999	1,624	17.4	2,076	22.2
\$150,000 or more	1,939	20.7	2,457	26.3
<b>Total</b>	<b>9,355</b>	<b>100</b>	<b>9,339</b>	<b>100</b>
<b>Median Household</b>	<b>\$79,500</b>		<b>\$96,710</b>	
<b>Bergen County</b>	<b>\$65,241</b>		<b>\$100,358</b>	

\* Average between January 2006 and December 2008.

Source: U.S. Census-2000, American Community Survey-3 year estimates.

## 5. EMPLOYMENT ANALYSIS

The MLUL requires that a housing plan include data on employment levels in the community. The following tables present information on the Township's employment characteristics.

- a. Covered Employment. The following table provides information on private sector covered employment within the Township. In 2008, there were 14,615 private sector jobs in Mahwah.

**Table 15**  
**Covered Employment Trends (Private Sector): Selected Years**  
**Mahwah, New Jersey**

Year	Number of Jobs
1990	9,533
1997	11,143
1998	12,184
1999	13,714
2003	12,836
2004	12,391
2005	13,675
2006	14,615
2007	15,054
2008	14,615

3<sup>rd</sup> Quarter (September) numbers shown.

Source: NJ Department of LWD

- b. Employment Characteristics of Employed Residents. The following two tables detail information on the employment characteristics of employed Mahwah residents. Table 16 details occupation characteristics, while Table 17 details industry characteristics.

**Table 16**  
**Employed Persons 16 & Over, By Occupation: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Occupation	2000		2006-2008*	
	Number	Percent	Number	Percent
Management, professional, and related occupations	6,323	49.7	6,423	49.3
Service occupations	1,181	9.3	1,237	9.5
Sales and office occupations	3,932	30.9	4,292	33.0
Farming, fishing, and forestry occupations	8	0.1	21	0.2
Construction, extraction, and maintenance occupations	533	4.2	544	4.2
Production, transportation, and material moving occupations	754	5.9	503	3.8
<b>Total</b>	<b>12,731</b>	<b>100</b>	<b>13,020</b>	<b>100</b>

\* Average between January 2006 and December 2008  
Source: U.S. Census- 2000, American Community Survey- 3 year estimates.

**Table 17**  
**Employed Persons 16 & Over, By Industry: 2000 and 2006-2008\***  
**Mahwah, New Jersey**

Industry	2000		2006-2008*	
	Number	Percent	Number	Percent
Agriculture, forestry, fishing and hunting, and mining	24	0.2	41	0.3
Construction	416	3.3	465	3.6
Manufacturing	1,532	12.0	1,102	8.5
Wholesale trade	865	6.8	681	5.2
Retail trade	1,546	12.1	1,448	11.1
Transportation and warehousing, and utilities	681	5.3	773	5.9
Information	696	5.5	684	5.3
Finance, insurance, real estate, and rental and leasing	1,557	12.2	1,787	13.7
Professional, scientific, management, administrative, and waste management services	1,944	15.3	1,871	14.4
Educational, health and social services	2,093	16.4	2,463	18.9
Arts, entertainment, recreation, accommodation and food services	736	5.8	918	7.0
Other services (except public administration)	398	3.1	531	4.1
Public administration	243	1.9	256	2.0
<b>Total</b>	<b>12,731</b>	<b>100.0</b>	<b>13,020</b>	<b>100</b>

\* Average between January 2006 and December 2008  
Source: U.S. Census-2000, American Community Survey- 3 year estimates.

- c. Employment Projections. Detailed employment projections are provided in the Fair Share section of this document, as required by COAH in determining the Township's growth share obligation.

## **6. HOUSING AND EMPLOYMENT PROJECTIONS**

The Fair Share Obligation section of this document will include detailed housing and employment projections pursuant to COAH and the Highlands Council rules for establishing the "growth share" component of the fair share obligation. This section will also identify historical and projected growth trends.

In addition, developments that have received municipal approvals but have not yet received certificates of occupancy (COs) are presented in the tables below. As shown, the Township has approved the construction of 12 dwelling units and 276,379 square feet of non-residential development. This information is presented in this section, and not in the Fair Share Obligation section of this document, because the Highlands Council's rules for establishing the growth share obligation do not require that such approved developments be taken into account. Instead, COs for approved developments will get tracked in the years following substantive certification of the Township's Housing Element and Fair Share Plan; only if such growth exceeds the housing and employment projections set forth in the Fair Share Obligation section of this document will the Township be required to amend its Fair Share Plan.

**Table 18**  
**Approved Residential Development Applications without COs**  
**Mahwah Township, New Jersey**

<b>Approved Projects</b>	<b>Total Units</b>
Boone (B 54, L 27)	1
Kristison (B 23, L 55.08)	1
Ceristano (B 23, L 55.04)	1
Kreshnik (B 124, L 27)	1
Edmund (B 73, L 20.01)	1
Dlugi (B 4, L 23, 24, 25)	1
Franklin Tpke. Construction (B 21, L 24.03)	1
Krzyzanowski (B 21, L 24.03)	1
Dourado (B 11, L 31, 32, 33)	1
Dubij (B 120, L 57)	1
Northwestern Park, Inc.	1
Segna (B 1, L 114)	1
<b>Total</b>	<b>12</b>

**Table 19**  
**Approved Non-Residential Development Applications without COs**  
**Mahwah Township, New Jersey**

<b>Approved Projects</b>	<b>Type</b>	<b>Total Sq. Ft.</b>	<b>Demo</b>
OTO Dev. (B 136, L 5)	Hotel	69,354	10,000 (Barn)
Cleymore (B 132, L 2, 3)	Hotel	44,000	--
Graham (B 71, L 11-13, 18-21)	Retail/Office	22,000	7,560 (Retail)
Pilot (B 136, L 2-3)	Service Station	4,282	5,697 (Service Station)
Russo (B 132, L 4)	Data Center	160,000*	--
<b>Total</b>		<b>299,636</b>	<b>23,257</b>

\* Project total = 400,000 square feet. 240,000 square feet have already received CO's.

**SECTION II**  
**FAIR SHARE OBLIGATION**

## A. INTRODUCTION

The methodology for determining the Township's third-round affordable housing obligation changed significantly from the prior round regulations. Under COAH's third-round rules, a municipality's third-round affordable housing obligation is a function of three components:

- Rehabilitation Share
- Remaining Prior Round Obligation
- Growth Share

The growth share component represents the most significant change from the prior round, as it requires that each municipality determine its own affordable housing obligation based on the amount of residential and non-residential growth anticipated over the third-round period from 2004 to 2018. Each of the three components is combined to determine the municipality's total affordable housing obligation. More detail on each component is provided below.

1. Rehabilitation Share: The rehabilitation share component of the affordable housing obligation is based on the municipality's existing housing deficiencies and includes existing housing units as of April 1, 2000 that are both deficient and occupied by households of low or moderate income. A municipality's Total Rehabilitation Share is equal to the sum of its overcrowded and dilapidated units, multiplied by its regional Low-/Moderate-Income Deterioration Share, minus its Rehabilitation Share Credit. The rehabilitation share essentially replaces what was known as indigenous need in the previous rounds. As detailed herein, COAH has assigned a new rehabilitation share of 44 units to Mahwah.
2. Prior Round Obligation: The Prior Round Obligation is the total Fair Share Obligation for the period 1987 to 1999. As noted in Appendix C, COAH is adopting municipalities' unadjusted 1987 to 1999 obligations, first published in 1993. Accordingly, Mahwah's Prior Round Obligation is 350 units.

To determine the remaining Prior Round Obligation, a municipality imposes any adjustments approved for its second round plan and subtracts affordable housing units already built or transferred as part of a certified plan (or judgment of repose).

3. Growth Share: The growth share portion of a municipality's fair share obligation is based on the projected residential and employment growth in the municipality over the period between 2004 and 2018. Growth share is defined as:

"The affordable housing obligation generated in each municipality by both residential and non-residential development from 2004 through 2018 and represented by a ratio of one affordable housing unit for every four market-rate housing units constructed plus one affordable housing unit for every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality."

Each individual municipality's actual growth between 2004 and 2018 generates an affordable housing obligation. For residential development, one affordable housing unit obligation is generated for every four market rate residential units constructed in the

municipality. For non-residential development, one unit of affordable housing obligation is generated for each 16 jobs created in the community. Job creation estimates are based on the amount of new non-residential square footage developed within the community.

For example, if the municipality experiences a net growth of 100 market rate units between 2004 and 2018, an obligation of 20 affordable housing units is created. And if 25,000 square feet of additional office space is constructed in the municipality, 67.5 jobs would be generated (based on a ratio of 2.7 office jobs/1,000 square feet), and a 4.2 unit affordable housing obligation would result.

The following section contains development projections and a determination of the growth share assessment for the third-round obligation.

## B. CALCULATION OF AFFORDABLE HOUSING OBLIGATION

The calculation of the township's affordable housing obligation is detailed below.

1. Rehabilitation Share. As noted above, COAH has assigned Mahwah a Rehabilitation Share of 44 units.
2. Remaining Prior Round Obligation. Appendix C indicates a recalculated prior round new construction obligation of 350 units. The Township will address this obligation with the 271 units in the Society Hill Development, and 79 units from the Ridge Gardens project. The following table depicts all projects in Mahwah containing affordable units.

**Table 20**  
**Prior Round Components**  
**Mahwah, New Jersey**

<b>Plan Component</b>	<b>Affordable Units</b>	<b>Units Used To Address Prior Round</b>
Franklin Crossing	75 Senior Rental Units	--
Ramapo Brae	54 Rental Units 35 Sales Units	-- --
Ridge Gardens	114 Sales Units	79
Society Hill	271 Sales Units	271
Franklin Heights	75 Sales Units	--
<b>TOTAL</b>	<b>624 Units</b>	<b>350</b>

3. Growth Share. The growth share component of the Township's affordable housing obligation is calculated based on the projected amount of residential and non-residential growth anticipated between 2004 and 2018. Under the third round regulations, this projected growth is provided by COAH under NJAC 5:97 Appendix F. However, municipalities within the Highlands Region that are conforming to the Highlands Regional Master Plan (RMP) for both the Preservation and Planning Areas are subject to adjusted growth projections. These RMP Adjusted Growth Projections are based on an analysis of actual growth from 2004 to 2008 and the results of the Highlands Municipal Build-Out

Report, as outlined below and as presented in Workbook D in the appendix of this document. Once the analysis is complete, this growth is translated into an affordable housing obligation, based on a standard of one affordable unit among five units that are projected and one affordable unit for every 16 jobs that are projected to be created.

a. RMP Adjusted Projections of Residential Growth

- i. Actual Residential Growth: Actual residential growth for the Township from 2004 to 2008 is shown in the table below, along with it associated affordable housing obligation. As shown, the affordable housing obligation for residential growth from this period is 25.6 units.

**Table 21**  
**Actual Residential Growth: 2004-2008**  
**Mahwah, New Jersey**

	2004	2005	2006	2007	2008	Total	Affordable Housing Obligation (Total divided by 5)
CO's	29	23	23	29	24	128	25.6

- ii. Projected Residential Growth: Residential growth between 2009 and 2018 is projected based on the results of the Highlands Municipal Build-Out Report for Mahwah Township. This report, released by the Highlands Council in July 2009, provides estimates of the capacity for growth in the entire municipality based on potential developable lands and existing municipal conditions, including water availability, septic system yield, and water and sewer utility capacity.

The following table presents the results of the Highlands Municipal Build-Out Report for Mahwah Township. As shown, the Highlands Council projects that Mahwah's potential for new residential development is 44 units. This incurs an 8.8 unit affordable housing obligation for residential growth in this time frame.

**Table 22**  
**Projected Residential Growth: 2008-2018**  
**Mahwah, New Jersey**

	Preservation Area	Planning Area	Totals	Affordable Housing Obligation
Total Residential Units	0	44	44	8.8
Residential Units – Sewered	0	16	16	
Septic System Yield	0	28	28	

- iii. Total Residential Growth: The following table provides the total residential growth projection from 2004 to 2018 and the associated affordable housing obligation. As shown in the table, the total residential growth projected for the Third Round period is 172 units. This incurs a 34.4 residential growth share obligation.

**Table 23**  
**Total Residential Growth: 2004-2018**  
**Mahwah, New Jersey**

	<b>Totals</b>	<b>Affordable Housing Obligation</b>
Actual Residential Growth (2004-2008)	128	25.6
Projected Residential Growth (2008-2018)	44	8.8
<b>Total</b>	<b>172</b>	<b>34.4</b>

b. RMP Adjusted Projections of Non-Residential Growth

- i. Actual Non-Residential Growth: The following tables present actual non-residential growth in the municipality for the period between January 1, 2004 and December 31, 2008. Non-residential growth is indicated by certificates of occupancy and demolition permits issued. The first table presents this information based on the total square footage by type of non-residential development (i.e. office, retail, etc.), which is then translated into employment growth in the second table, based on the multipliers provided in Appendix D of COAH's substantive rules. As shown, actual growth between 2004 and 2008 in Mahwah Township totaled 451 jobs. This growth incurs a 28.2 unit affordable housing obligation for non-residential growth for 2004 to 2008.

**Table 24**  
**Non- Residential Growth: 2004-2008**  
**Mahwah, New Jersey**

	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Total</b>
Office	1,561	19,120	27,000	47,509	7,000	<b>102,190</b>
Retail	0	10,488	0	0	0	<b>10,488</b>
A-2	860	3,346	0	0	0	<b>4,206</b>
Education	0	38,684	0	0	0	<b>38,684</b>
Industrial	0	110,863	0	0	0	<b>110,863</b>
Storage	1	960	0	1	0	<b>960</b>

**Table 25**  
**Non-Residential Growth Converted to Jobs: 2004-2008**  
**Mahwah, New Jersey**

	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Total</b>	<b>Affordable Housing Obligation (Total divided by 16)</b>
Office	4.37	53.54	75.60	133.03	19.6	<b>286.14</b>	<b>17.8</b>
Retail	0	17.83	0	0	0	<b>17.83</b>	<b>1.1</b>
A-2	2.75	10.71	0	0	0	<b>13.46</b>	<b>0.8</b>
Education	0	0	0	0	0	<b>0</b>	<b>0</b>
Industrial	0	133.04	0	0	0	<b>133.04</b>	<b>8.3</b>
Storage	0	1	0	0	0	<b>1</b>	<b>0.1</b>
<b>Total</b>	<b>7.12</b>	<b>216.12</b>	<b>75.60</b>	<b>133.03</b>	<b>19.6</b>	<b>451.47</b>	<b>28.2</b>

- ii. Projected Non-Residential Growth: Non-residential growth between 2009 and 2018 is projected based on the results of the Highlands Municipal Build-Out Report for



Mahwah Township. The following table presents the results of the Highlands Municipal Build-Out Report for Mahwah Township. As shown, the Highlands Council projects that Mahwah's potential for new non-residential development is 157 jobs. This translates into a 9.8 unit affordable housing obligation.

**Table 26**  
**Projected Non-Residential Growth: 2008-2018**  
**Mahwah, New Jersey**

	<b>Preservation Area</b>	<b>Planning Area</b>	<b>Totals</b>	<b>Affordable Housing Obligation</b>
Non-Residential Jobs - Sewered	0	157	157	9.8

iii. Total Non-Residential Growth: The following table depicts the total non-residential growth for the entire Third Round. Mahwah's non-residential affordable housing obligation is 38 units.

**Table 27**  
**Total Non-Residential Growth: 2004-2018**  
**Mahwah, New Jersey**

	<b>Totals</b>	<b>Affordable Housing Obligation</b>
Actual Non-Residential Growth (2004-2008)	451.47	28.2
Projected Non-Residential Growth (2008-2018)	157	9.8
<b>Total</b>	<b>172</b>	<b>38</b>

c. Total Growth Share Obligation: Residential and Non-Residential

The complete growth share obligation, consisting of the residential growth share and non-residential growth share, is shown below. As indicated, Mahwah has a total obligation of 72 units.

**Table 28**  
**Total Growth Share Obligation: 2004-2018**  
**Mahwah, New Jersey**

	<b>Totals</b>
Residential Growth Share	34.4
Non-Residential Growth Share	38
<b>Total Growth Share Obligation</b>	<b>72</b>

4. Total Fair Share Obligation. The total fair share obligation is the sum of the rehabilitation share, the remaining prior round obligation, and the growth share obligation. As shown below, Mahwah has a total fair share obligation of 116 units.

**Table 29**  
**Total Fair Share Obligation: 2004-2018**  
**Mahwah, New Jersey**

	<b>Totals</b>
Rehabilitation Share	44
Remaining Prior Round Obligation	0
Growth Share	72
<b>Total Growth Share Obligation</b>	<b>116</b>

### **SECTION III: FAIR SHARE PLAN**

## A. PLAN SUMMARY

This section of the plan details the projects, mechanisms and funding sources which will be used to meet the Township's affordable housing obligation. It is broken down into three subsections: (1) rehabilitation share, (2) remaining prior round obligation and (3) growth share obligation.

1. Rehabilitation Share. COAH has assigned the Township a rehabilitation share of 44 units. The Township's proposal for addressing its rehabilitation obligation is set forth later in this section.
2. Remaining Prior Round Obligation. As detailed in the previous section of this plan, the Township has 350 units of remaining prior round obligation that shall be addressed with credit for projects that have already been constructed.
3. Growth Share Obligation. As detailed in the previous section of this plan, Mahwah's growth share obligation is 72 units. The rules governing the growth share obligation relate to Mahwah as follows:
  - a. Rental Component. COAH regulations stipulate in NJAC 5:97-3.10(b)3 that at least 25 percent of a municipality's growth share obligation must be addressed with rental housing. Therefore, the Township is obligated to provide 18 affordable rental units. Per NJAC 5:97-3.4(b), a minimum of 50 percent of these affordable rental units (equal to 9) shall be family housing.
  - b. Age Restricted Units. COAH regulations stipulate in NJAC 5:97-3.10(c)2 that up to 25 percent of a municipality's growth share obligation may be addressed with age-restricted housing. Therefore, the Township may provide up to 18 age-restricted units.
  - c. Very Low-Income Units. COAH also requires municipalities to restrict a minimum of 13 percent of its growth share obligation to very low-income families. Mahwah therefore has a 9-unit obligation for very low-income households.
  - d. Family Housing Units (5:97-3.9). Fifty percent of a municipality's growth share obligation must be met with family housing units. Accordingly, Mahwah must provide 36 family units.
  - e. Bonus Caps. COAH regulations stipulate in NJAC 5:97-3.20(b) that the total number of bonuses for the growth share obligation granted in a fair share plan shall not exceed 25 percent of the projected growth share obligation. Therefore, the Township may be granted up to 18 bonus credits. It is noted that, per NJAC 5:97-3.6(a), a municipality may only receive rental bonus credits for units in excess of its growth share rental obligation.

**B. PLAN COMPONENTS**

1. Rehabilitation Program. Mahwah seeks credit for 3 units that have been rehabilitated through the Bergen County Home Improvement Program. Details on this work are provided in the appendices. The Township intends on satisfying its remaining rehabilitation obligation through continued participation in the Bergen County Home Improvement Program, and through the use of its development fees.
2. Prior Round Obligation. As noted earlier, the 350 unit Prior Round Obligation shall be addressed with 271 units in the Society Hill Development and 79 units from the Ridge Gardens project.
3. Growth Share Obligation. The Township has 274 excess affordable units, after subtracting the 350 units that are being allocated to the prior round, that are potentially eligible to address the Township's Growth Share obligation. An analysis of these units finds that minimally 164 of these 274 units have affordability controls on them that are to extend to at least 2018. This indicates that 72 of these units can be used to meet the Township's Growth Share obligation.

This data suggests that there are still 202 excess credits in the Township, after the distribution of units to the prior round and growth share round, of which 110 appear to be losing affordability controls prior to 2018. These 110 units losing affordability controls prior to 2018 include the 75 age-restricted rental units in Franklin Crossing, and 35 of 114 units in the Ridge Gardens project that are not being not counted towards the Prior Round obligation.

The Township will meet its growth share obligation with credits from the Ramapo Brae project, and the Franklin Heights project, as detailed below. These projects meet the Township's requirements for rental and family units. However, these units were built long before COAH required very low-income units. Accordingly, the Township is seeking a waiver from this requirement. The basis for this waiver is the extent to which the Township has demonstrated its strong commitment to providing affordable housing. Affordable housing has been built well in excess of what is required. Requiring Mahwah to build 9-units very low-income units to meet this new requirement would place an unfair burden on a community that has more than provided its fair share of affordable housing.

- a. Ramapo Brae: This 89-unit project was completed in 1989 and is operated by the Bergen County Housing Authority. The project is restricted entirely to low-income households. Thirty-five of these units are sales units, while the remainder is rental. The township will utilize 36 rental units from this project to address its obligation. These units will address the municipality's 18-unit rental obligation. The additional 18-units are eligible for bonus credits. Due to the caps noted above, the Township is only eligible for 18 bonus credits. These units are restricted in perpetuity. The remaining 53 units are excess units that may be applied to future obligations.
- b. Franklin Heights: The Franklin Heights project includes 75 sale units affordable to low and moderate income households. These units were restricted for 25 years. The income restrictions will begin to expire in 2021. The Township will utilize 18 units from this

project to address its Growth Share obligation. The remaining 57 units are excess units that may be applied to future obligations.

4. Summary of Growth Share Obligation. As shown in the table below, Mahwah has 182 credits for its Third Round obligation. This is 110-units in excess of its 72-unit obligation. These excess credits may be eligible for future obligations.

**Table 30**  
**Growth Share Components**  
**Mahwah, New Jersey**

<b>Component</b>	<b>Units</b>	<b>Addressing 3<sup>rd</sup> Round Obligation*</b>
Ramapo Brae	89	36 +18 unit rental bonus
Franklin Heights	75	18
<b>Totals</b>	<b>164</b>	<b>72</b>

\*This plan leaves 53 excess credits from Ramapo Brae, and 57 credits from Franklin Heights that are available for any future obligations that may be imposed on the Township.

**APPENDICES**

1. COAH Service List
2. COAH Workbook D
3. Development Fee Ordinance
4. Draft Governing Body Resolution Requesting Approval of Development Fee Ordinance Spending Plan
5. Draft Spending Plan
6. Draft Governing Body Resolution Requesting Review and Approval of a Municipal Affordable Housing Trust Fund Spending Plan
7. Draft Affordable Housing Ordinance
8. Ordinance to Provide for the Appointment of a Municipal Housing Liaison
9. Resolution Approving the Municipal Housing Liaison



**MUNICIPALITY, COUNTY**  
**SERVICE LIST**  
N.J.A.C. 5:96-3.7



A municipality that petitions the Council on Affordable Housing (COAH) for substantive certification or is otherwise participating in COAH's substantive certification process must include an updated service list in order for COAH to review its submittal. At the time it files or petitions for substantive certification a municipality must provide COAH with a Service List which includes the following information (Please print clearly):

1. Current names and addresses of owners of sites included in previously certified or court settled plans that were zoned for low- and moderate-income housing and/or were to pay a negotiated fee(s). Owners of sites that have been completely developed may be excluded;

PROJECT NAME	_____	BLOCK	_____
PROPERTY OWNER	_____	LOT	_____
EMAIL	_____	TITLE	_____
ADDRESS	_____	PHONE NO.	_____
	_____	FAX NO.	_____

PROJECT NAME	_____	BLOCK	_____
PROPERTY OWNER	_____	LOT	_____
EMAIL	_____	TITLE	_____
ADDRESS	_____	PHONE NO.	_____
	_____	FAX NO.	_____

PROJECT NAME	_____	BLOCK	_____
PROPERTY OWNER	_____	LOT	_____
EMAIL	_____	TITLE	_____
ADDRESS	_____	PHONE NO.	_____
	_____	FAX NO.	_____

PROJECT NAME	_____	BLOCK	_____
PROPERTY OWNER	_____	LOT	_____
EMAIL	_____	TITLE	_____
ADDRESS	_____	PHONE NO.	_____
	_____	FAX NO.	_____

PROJECT NAME	_____	BLOCK	_____
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## MUNICIPALITY, COUNTY SERVICE LIST

N.J.A.C. 5:96-3.7



3. Except for Mayors, Clerks, Municipal Attorneys and Municipal Housing Liaisons, which are automatically added to every Service List by COAH, the names and addresses of all municipal employees or designees that the municipality would like notified of all correspondence relating to the filing or petition;

NAME	<u>Brian T. Campion</u>	TITLE	<u>Administrator</u>
EMAIL	<u>bcampion@mahwahtwp.org</u>	PHONE NO.	<u>201-529-5757</u>
ADDRESS	<u>475 Corporate Drive</u>	FAX NO.	<u>201-529-0061</u>
	<u>Mahwah, New Jersey</u>		

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____
	_____		

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____
	_____		

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____
	_____		

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____
	_____		

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____
	_____		



**MUNICIPALITY, COUNTY**  
**SERVICE LIST**  
N.J.A.C. 5:96-3.7



**PROPERTY  
OWNER  
EMAIL  
ADDRESS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**LOT**

\_\_\_\_\_

**TITLE**

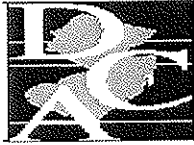
\_\_\_\_\_

**PHONE NO.**

\_\_\_\_\_

**FAX NO.**

\_\_\_\_\_



# MUNICIPALITY, COUNTY SERVICE LIST

N.J.A.C. 5:96-3.7



4. The names and addresses of relevant County, Regional and/or State entities; AND

NAME	<u>Karl Hartkopf</u>	TITLE	_____
EMAIL	<u>khartkopf@dca.state.nj.us</u>	PHONE NO.	609-984-9797
ADDRESS	<u>101 S Broad Street</u> <u>PO Box 204</u> <u>Trenton, NJ 08625</u>	FAX NO.	_____
NAME	<u>James Humphries</u>	TITLE	_____
EMAIL	<u>James.humphries@highlands.state.nj.us</u>	PHONE NO.	<u>908-879-6737</u>
ADDRESS	<u>100 North Road</u> <u>Route 513</u> <u>Chester, NJ 07930-2322</u>	FAX NO.	_____
NAME	<u>Peter Kortright, III, PP</u>	Division	_____
EMAIL	_____	Director	_____
ADDRESS	<u>1 Bergen County Dept. of</u> <u>Planning &amp; Economic</u> <u>Development</u> <u>4<sup>th</sup> Fl.</u> <u>Hackensack, NJ 07601-</u> <u>7076</u>	PHONE NO.	<u>201-336-6449</u>
		FAX NO.	_____
NAME	<u>Bergen County</u> <u>Department of Planning</u> <u>&amp; Economic</u> <u>Development</u>	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	<u>1 Bergen County Plaza</u> <u>21 Main Street</u> <u>Hackensack, NJ 07601-</u> <u>7076</u>	FAX NO.	_____
NAME	<u>Elizabeth Semple</u>	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	<u>NJ Dept. of</u> <u>Environmental Protection</u> <u>PO Box 402</u> <u>Trenton, NJ 08625</u>	FAX NO.	_____



**MUNICIPALITY, COUNTY**  
**SERVICE LIST**  
N.J.A.C. 5:96-3.7



5. Names of known interested party(ies).

NAME	<u>Nilufer O. DeScherer, Esq.</u>	TITLE	_____
EMAIL	<u>ndescherer@hertenburstein.com</u>	PHONE NO.	_____
ADDRESS	<u>Court Plaza South</u> <u>21 Main Street</u> Hackensack, NJ 07601-7095	FAX NO.	_____

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____

NAME	_____	TITLE	_____
EMAIL	_____	PHONE NO.	_____
ADDRESS	_____	FAX NO.	_____

**Summary of Adjusted Growth Share Projection Based On Land Capacity**  
**(Introduction to Workbook D)**

**Municipality Code:** 0233

**Municipality Name:** Mahwah Township

[Muni Code Lookup](#)

This workbook is to be used for determining the projected Municipal Growth Share Obligation by comparing growth projected by COAH with actual growth based on certificates of occupancy that have been issued from 2004 through 2008 and the RMP build-out analysis conducted under Module 2 of the Highlands RMP conformance process. Data must be entered via the "tabs" found at the bottom of this spreadsheet which may also be accessed through the highlighted links found throughout the spreadsheet. This workbook consists of five worksheets that, when combined on this introduction page, provide a tool that allows the user to enter exclusions permitted by N.J.A.C. 5:97-2.4 to determine the projected Growth Share Obligation. COAH-generated Growth Projections included in Appendix F(2) of the revised Third Round Rules, Highlands Council build-out figures based on Mod 2 Reports and actual growth based on COs as published by the DCA Division of Codes and Standards in The Construction Reporter are imported automatically upon entry of the Municipal Code.

[Click Here to enter COAH and Highlands Council data](#)

Municipalities seeking to request a revision to the COAH-generated growth projections based on opting in to the Highlands RMP may do so by providing this comparative analysis of COAH and RMP build-out projections. After completing this analysis, the growth projections may be revised based on the Highlands RMP build-out analysis. Actual growth must first be determined using the Actual Growth worksheet. The RMP adjustment applies only to RMP capacity limitations that are applied to growth projected from 2009 through 2018.

[Click Here to Enter Actual Growth to Date](#)

[Click Here to Enter Permitted Exclusions](#)

[Click Here to View Detailed Results from Analysis](#)

**Summary Of Worksheet Comparison**

	<b>COAH Projected Growth Share</b>	<b>Growth Share Based on Highlands RMP</b>
Residential Growth	1,262	172
Residential Exclusions	0	0
Net Residential Growth	1,262	172
Residential Growth Share	252.40	34.40
Non-Residential Growth	8,488	608
Non-Residential Exclusions	0	0
Net Non- Residential Growth	8,488	608
Non-Residential Growth Share	530.50	38.03
Total Growth Share	783	72

The Highlands RMP analysis results in a revision to the COAH-generated growth projection. Mahwah Township may file this Workbook and use a Residential Growth Share of 34.4 plus a Non-residential Growth Share of 38.03 for a total Highlands Adjusted Growth Share Obligation of 72 affordable units

## Growth Projection Adjustment - Actual Growth

Actual Growth 01/01/04 to 12/31/08

**Municipality Name: Mahwah Township**

### Residential COs Issued

As Published by D C S	128
Per Municipal Records (if different)	128
<b>Qualified Residential Demolitions</b>	

**Note:** To qualify as an offsetting residential demolition, the unit must be the primary residence of the household for which the demolition permit has been issued, it had to be occupied by that owner for at least one year prior to the issuance of the demolition permit, it has to continue to be occupied by that household after the re-build and there can be no change in use associated with the property. (See N.J.A.C. 5:97-2.5(a)1.v.) A Certification Form must be completed and submitted for each qualifying demolition.

### Get Demolition Certification Form

Non-residential CO's by Use Group	Square Feet Added (COs Issued) As Published by D C S	Square Feet Added (COs Issued) per Municipal Records (if different)	Square Feet Lost Demolition Permits Issued)	Jobs Per 1,000 SF	Total Jobs
B	102,190	102,190		2.8	286.13
M	10,488	10,488		1.7	17.83
F	110,863	110,863		1.2	133.04
S	962	962		1.0	0.96
H	0	0		1.6	0.00
A1	0	0		1.6	0.00
A2	4,206	4,206		3.2	13.46
A3	0	0		1.6	0.00
A4	0	0		3.4	0.00
A5	0	0		2.6	0.00
E	38,684	38,684		0.0	0.00
I	0	0		2.6	0.00
R1	1	1		1.7	0.00
<b>Total</b>	<b>267,394</b>	<b>267,394</b>	<b>0</b>		<b>451.42</b>

Return to Main Page (Workbook D Intro)

Proceed to COAH Data and RMP Module 2 Build-out Data

Proceed to Exclusions Tab

## Affordable and Market-Rate Units Excluded from Growth

Municipality Name: Mahwah Township

Prior Round Affordable Units NOT included in Inclusionary Developments Built Post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	
Accessory Apartments	
Municipally Sponsored and 100% Affordable	
Assisted Living	
Other	
<b>Total</b>	<b>0</b>

Market and Affordable Units in Prior Round Inclusionary Development Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if affordable units are rentals)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
		0			0
		0			0
		0			0
		0			0
		0			0
<b>Total</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
<b>Total</b>	<b>0</b>	<b>0</b>

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[Return to COAH Data and RMP Module 2 Build-out Data](#)

[Return to Actual Growth](#)

[View Detailed Results from Analysis](#)

## COAH Growth Projections and Highlands Buildout Data

Must be used in all submissions

### Municipality Name: Mahwah Township

The COAH columns have automatically been populated with growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. The Highlands RMP Build-out columns have automatically been populated with residential and non-residential build-out figures from the municipal build-out results with resource and utility constraints found in Table 4 of the RMP Module 2 report. Always check with the Highlands Council for updates. If figures have been updated, enter updated build-out results. Use the Tabs at the bottom of this page or the links within the page to toggle to the exclusions worksheet of this workbook. After entering all relevant exclusions, toggle back to the introduction page to view the growth share obligation that has been calculated based on each approach.

#### COAH Projections

From Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq.  
Allocating Growth To Municipalities

Residential	Non-Residential
1,262	8,488

#### Highlands RMP Buildout Analysis

From Module 2

Table 4 – Municipal Build-Out Results With Resource and Utility Constraints  
Updated as of October 2, 2009

	Preservation Area	Planning Area	Totals
Residential units – Sewered	0	16	16
Septic System Yield	0	28	28
Total Residential Units	0	44	44
Non-Residential Jobs – Sewered	0	157	157

Note: Always check with the Highlands Council for updated municipal Build-out numbers. Enter build-out figures in the appropriate boxes only if revised figures have been provided by the Highlands Council.

[Click Here to link to current Mod 2 Build-Out Reports](#)

[Proceed to Enter Prior Round Exclusions](#)  
[Retrun to Enter Actual Growth](#)  
[Return to Main Page \(Workbook D Intro\)](#)



## Comparative Analysis Detail For Mahwah Township

The following chart applies the exclusions permitted pursuant to N.J.A.C 5:97-2.4 to both the COAH growth projections and the projected growth that results from the Highlands RMP build-out analysis plus actual growth for the period January 1, 2004 through December 31, 2008.

COAH			Highlands		
	Residential	Non-Residential		Residential	Non-Residential
Projected Growth From COAH Appendix F(2)	1,262	8,488	RMP Build-out results from Mod2 Table 4	44	157
			Actual Growth from COs issued 2004 through 2008	128	451
Residential Exclusions per 5:97-2.4(a) from "Exclusions" tab			Residential Exclusions per 5:97-2.4(a) from "Exclusions" tab		
COs for prior round affordable units built or projected to be built			COs for prior round affordable units built or projected to be built		
Inclusionary Development	0		Inclusionary Development	0	
Supportive/Special Needs Housing	0		Supportive/Special Needs Housing	0	
Accessory Apartments	0		Accessory Apartments	0	
Municipally Sponsored or 100% Affordable	0		Municipally Sponsored or 100% Affordable	0	
Assisted Living	0		Assisted Living	0	
Other	0		Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	0		Market Units in Prior Round Inclusionary development built post 1/1/04	0	
Subtract the following Non-Residential Exclusions per 5:97-2.4(b) from "Exclusions" tab			Subtract the following Non-Residential Exclusions per 5:97-2.4(b) from "Exclusions" tab		
Affordable units	0		Affordable units	0	
Associated Jobs		0	Associated Jobs		0
<b>Net Growth Projection</b>	<b>1,262</b>	<b>8,488</b>	<b>Net Growth Projection</b>	<b>172</b>	<b>608</b>
Projected Growth Share (Residential divided by 5 and jobs divided by 16)	252.40	530.50	Projected Growth Share (Residential divided by 5 and jobs divided by 16)	34.40	38.03
<b>Total Projected Growth Share Obligation</b>	<b>783</b>	<b>Affordable Units</b>	<b>72</b>	<b>Affordable Units</b>	

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[Return to COAH Data and RMP Module 2 Build-out Data](#)  
[Return to Actual Growth](#)  
[Return to Exclusions](#)

## Municipal Codes

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<b>Municipality</b>	<b>County</b>	<b>Code</b>
Mahwah Township	Bergen	0233
Oakland Borough	Bergen	0242
Alexandria Township	Hunterdon	1001
Bethlehem Township	Hunterdon	1002
Bloomsbury	Hunterdon	1003
Califon Borough	Hunterdon	1004
Clinton Town	Hunterdon	1005
Clinton Township	Hunterdon	1006
Glen Gardner Borough	Hunterdon	1012
Hampton Borough	Hunterdon	1013
High Bridge Borough	Hunterdon	1014
Holland Township	Hunterdon	1015
Lebanon Borough	Hunterdon	1018
Lebanon Township	Hunterdon	1019
Milford Borough	Hunterdon	1020
Tewksbury Township	Hunterdon	1024
Union Township	Hunterdon	1025
Boonton Town	Morris	1401
Boonton Township	Morris	1402
Butler Borough	Morris	1403
Chester Borough	Morris	1406
Chester Township	Morris	1407
Denville Township	Morris	1408
Dover Town	Morris	1409
Hanover Township	Morris	1412
Harding Township	Morris	1413
Jefferson Township	Morris	1414
Kinnelon Borough	Morris	1415
Mendham Borough	Morris	1418
Mendham Township	Morris	1419
Mine Hill Township	Morris	1420
Montville Township	Morris	1421
Morris Township	Morris	1422
Morris Plains Borough	Morris	1423
Morristown Town	Morris	1424
Mountain Lakes Borough	Morris	1425
Mount Arlington Borough	Morris	1426
Mount Olive Township	Morris	1427
Netcong Borough	Morris	1428
Parsippany-Troy Hills Twp	Morris	1429
Pequannock Township	Morris	1431
Randolph Township	Morris	1432
Riverdale Borough	Morris	1433
Rockaway Borough	Morris	1434
Rockaway Township	Morris	1435
Roxbury Township	Morris	1436
Victory Gardens Borough	Morris	1437
Washington Township	Morris	1438
Wharton Borough	Morris	1439

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**TOWNSHIP OF MAHWAH**

**ORDINANCE NO. 1631**

**An Ordinance Amending Section 24-15 et seq. of the Code of the Township of the Township of Mahwah, entitled "Development Fees" to Conform with the Council on Affordable Housing's Recently Adopted Third Round Regulations and the Statewide Non-Residential Development Fee Act**

**WHEREAS**, the purpose of this ordinance is to amend the Township's Code to adopt a new development fee ordinance and affordable housing trust fund ordinance that conforms with the Council on Affordable Housing's recently adopted Third Round Regulations; and

**WHEREAS**, the purpose of this ordinance is to comply with the mandate of the Statewide Non-Residential Development Fee Act P.L. 2008, c.46. (C. 40:55D-8.1 through 8.7).

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Township of Mahwah as follows:

Section 1: The Code of the Township of Mahwah shall hereby be amended by deleting Section 24-15 in its entirety and replaced to read as follows:

**§ 24-15. DEVELOPMENT FEES**

**24-15.1 Purpose**

a. Purpose

1. In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's ("COAH's") adoption of rules.

2. Pursuant to P.L. 2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring, and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

3. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L. 2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

b. Basic requirements

1. This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.

2. The Township of Mahwah shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

**24-15.2 Definitions.** The following terms, as used in this ordinance, shall have the following meanings:

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary

development, a municipal construction project, or a 100 percent affordable development.

“Township” means the Township of Mahwah.

“COAH” means the New Jersey Council on Affordable Housing established under the Act, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

“Development fee” means funds paid by an individual, person, partnership, association, company, or corporation for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Equalized assessed value” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L. 1973, c.123 (C.54:1-35a through C.54:1-35c).

### **24-15.3 Residential Development Fees**

#### **a. Imposed Fees.**

1. For all residential developments, residential developers shall pay a fee of one and one-half percent (1.5%) of the equalized assessed value for residential development, provided no increased density is permitted.

2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for

each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

**Example:** If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and one half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

b. Eligible exactions, ineligible exactions, and exemptions for residential development

1. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, except that expansion of an existing residential structure which increases the living space by less than 20% and/or the volume of the existing structure by less than 20% shall be exempt from paying a development fee. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

#### **24-15.4 Non-residential Development Fees**

a. Imposed fees

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b. Eligible exactions, ineligible exactions, and exemptions for non-residential

development.

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5%) percent development fee, unless otherwise exempted below.

2. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations, and repairs.

3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L. 2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township as a lien against the



real property of the owner.

#### **24-15.5 Collection Procedures**

a. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit. For non-residential developments, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" and complete as per the instructions provided.

b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provide in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated final assessments as per the instructions provided in Form N-RDF.

c. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

d. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

e. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

f. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

g. Should the Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L. 2008, c.46 (C.40:55D-8.6).

h. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

i. Appeal of development fees

1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

#### **24-15.6 Affordable Housing Trust Fund**

a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on-site construction of affordable units;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with the Township's

affordable housing program.

c. Within seven days from the opening of the trust fund account, the Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

#### **24-15.7 Use of Funds**

a. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8-7 through 8.9 and specified in the approved spending plan.

b. Unless otherwise permitted by COAH, funds shall not be expended to reimburse the Township for past housing activities.

c. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households

in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle the Township to bonus credits pursuant to N.J.A.C. 5:96-18.

3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d. The Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

e. Unless otherwise permitted by COAH, no more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or and affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

#### **24.15.8 Monitoring**

The Township shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as to

the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

#### **24-15.9 Ongoing Collection of Fees**

The ability for the Township to impose, collect, and expend development fees shall expire with its substantive certification on the date of expiration of substantive certification unless the Municipality has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the date of expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (C.52:27D-320). The Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Township retroactively impose a development fee on such a development. The Township will not expend development fees after the expiration of its substantive certification.

Section 2: All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are repealed, but only to the extent of any inconsistencies.

Section 3: The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional or invalid by any court, the remaining parts of this ordinance will remain in full force and effect.

Section 4: This ordinance shall take effect after review and approval by COAH and final approval and publication according to law.

**BE IT FURTHER ORDAINED** that this Ordinance shall become effective after final passage, adoption and publication as required by law.

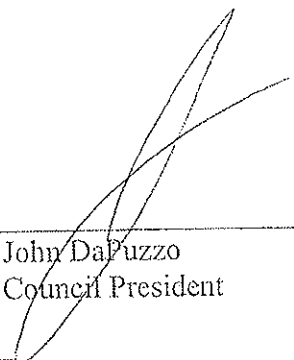


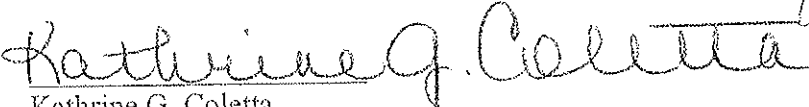
Ordinance No. 1631

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Date: 12/23/08

Attest

  
\_\_\_\_\_  
John DaPuzzo  
Council President

  
\_\_\_\_\_  
Kathrine G. Coletta  
Municipal Clerk

CERTIFICATION

I, Kathrine G. Coletta, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 4th day of December, 2008.

  
\_\_\_\_\_  
Kathrine G. Coletta, RMCMC  
Municipal Clerk



## **DRAFT ORDINANCE REQUESTING REVIEW AND APPROVAL OF THE DEVELOPMENT FEE ORDINANCE**

**WHEREAS**, the Governing Body of the Township of Mahwah, Bergen County petitioned the Council on Affordable Housing (COAH) for substantive certification on *[insert date]*; and

**WHEREAS**, P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), permits municipalities that are under the jurisdiction of COAH or of a court of competent jurisdiction and that have a COAH-approved spending plan to impose and retain fees on residential and non-residential development; and

**WHEREAS**, subject to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by the Council on Affordable Housing (COAH) that is accompanied by and includes the following:

1. A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);
2. A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
3. A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d) ;
4. A description of collection procedures per N.J.A.C. 5:97-8.3(f);
5. A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
6. A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

**WHEREAS**, the Township of Mahwah has adopted a development fee ordinance that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

**NOW THEREFORE BE IT RESOLVED** that the Governing Body of the Township of Mahwah, Bergen County, requests that COAH review and approve the Township of Mahwah's development fee ordinance.

---

Kathrine Coletta  
Municipal Clerk



**TOWNSHIP OF MAHWAH  
DRAFT SPENDING PLAN  
MAY 2010**

**INTRODUCTION**

The Township of Mahwah has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH on *[insert date of approval]* and adopted by the municipality on December 4, 2008. The ordinance establishes the Township of Mahwah affordable housing trust fund for which this spending plan is prepared.

As of February 19, 2010, the Township of Mahwah has collected \$2,877,279.22, expended \$962,188.22, resulting in a balance of \$1,915,091.00. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in Bank of America for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

The Township of Mahwah first petitioned COAH for substantive certification on September 25, 1997, and received prior approval to maintain an affordable housing trust fund on March 9, 1998. As of December 31, 2004, the prior round balance remaining in the affordable housing trust fund was \$ *[insert trust fund balance as of December 31, 2004]*. From January 1, 2005 through December 31, 2008, the Township of Mahwah collected an additional \$ *[insert total revenue]* in development fees, payments in lieu of construction, other funds, and/or interest. From January 1, 2005 through December 31, 2008, the Township of Mahwah expended funds on the affordable housing activities detailed in section 4 of this spending plan.

## **1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the period of third round substantive certification, the Township of Mahwah considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

*[Provide a breakdown by year for all sources of funds collected and/or anticipated during the substantive certification period. COAH will substitute actual revenue for the period between the preparation of this spending plan and COAH's approval, as entered by the municipality in the CTM system. Use and submit additional spreadsheet(s) as necessary. A sample spreadsheet format is provided below.]*

SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND - 2009 THROUGH 2018										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
(a) Development fees:											
1. Approved Development											
3. Projected Development											
(b) Interest											
Total											

The Township of Mahwah projects a total of \$ *[insert total of all revenue listed above]* in revenue to be collected between January 1, 2009 and December 31, 2018. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.





## 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Township of Mahwah:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with the Township of Mahwah's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

*[Provide a brief explanation of local procedures for distributing the municipality's affordable housing trust funds.]*

## 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

The Township of Mahwah will dedicate \$ *[insert amount of revenue to be dedicated]* to rehabilitation or new construction programs (see detailed descriptions in Fair Share Plan) as follows:

**Rehabilitation program:** \$ *[insert amount of revenues to be expended]*

**New construction project(s):** \$ *[insert amount of revenues to be expended, by project and total; individually list programs and projects e.g. for-sale and rental municipally sponsored, accessory apartments, etc.]*

(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

*[Municipalities are required to spend a minimum of 30 percent of development fee revenue to render existing affordable units more affordable and one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30 percent of the regional median income). Utilize the formulae below to project the minimum affordability assistance requirements. The actual affordability assistance minimums are calculated on an ongoing basis in the CTM system based on actual revenues.]*

*To initially project a funding amount that will be dedicated to affordability assistance, first subtract actual expenditures on all new construction, previously funded regional contribution agreements and rehabilitation activities from inception of the fund*

*through June 2, 2008 from the sum of actual and projected development fees and interest through December 31, 2018. Multiply this amount by 30 percent and then subtract actual affordability assistance expenditures from inception of the fund through December 31, 2008 from the result. The outcome of this calculation will be the total remaining funds that must be dedicated to affordability assistance for the period January 1, 2009 through December 31, 2018.*

*To initially project a funding amount that will be dedicated to affordability assistance for very low-income households, divide the affordability assistance figure derived from the above paragraph by three. The outcome of this calculation will be the total remaining funds that must be dedicated to very low-income affordability assistance for the period January 1, 2009 through December 31, 2018. Municipalities will receive credit against this projected minimum for affordability assistance activity from January 1, 2009 to the present.]*

Projected minimum affordability assistance requirement:

Actual development fees through 12/31/2008		\$
Actual interest earned through 12/31/2008	+	\$
Development fees projected 2009-2018	+	\$
Interest projected 2009-2018	+	\$
Less housing activity expenditures through 6/2/2008	-	\$
<b>Total</b>	=	
30 percent requirement	x 0.30 =	\$
Less Affordability assistance expenditures through 12/31/2008	-	\$
<b>PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2009 through 12/31/2018</b>	=	\$
<b>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2009 through 12/31/2018</b>	÷ 3 =	\$

The Township of Mahwah will dedicate \$ *[insert amount of revenues to be dedicated]* from the affordable housing trust fund to render units more affordable, including \$ *[insert amount of revenue to be dedicated]* to render units more affordable to households earning 30 percent or less of median income by region, as follows:

*[List affordability assistance programs such as down-payment assistance, rental assistance, converting low-income units to very-low-income units, etc.]*

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

*[Municipalities are permitted to use affordable housing trust fund revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative*

*expense maximum is calculated on an ongoing basis in the CTM system based on actual revenues.*

*To initially project a funding amount that will be available for administrative costs, sum all development fees actually collected since the inception of the account and all actual interest earned since the inception of the account with all projected development fees and interest projected to be collected through December 31, 2018. To this amount, add all payments in lieu of constructing affordable units and other account deposits from the inception of the account through July 17, 2008. From this total amount, subtract RCA expenditures made or contractually obligated from the inception of the account through December 31, 2018. Multiply this amount by 20 percent and then subtract actual administrative expenditures made from the inception of the account through December 31, 2008. The outcome of this calculation will be the total remaining funds that will be available to defray administrative expenses for the period January 1, 2009 through December 31, 2018.]*

The Township of Mahwah projects that \$[insert projected amount of revenue available] will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

*[Provide detailed description]*







## **5. EXCESS OR SHORTFALL OF FUNDS**

Pursuant to the Housing Element and Fair Share Plan, the governing body of the Township of Mahwah has adopted a resolution agreeing to fund any shortfall of funds required for implementing Rehabilitation Program. In the event that a shortfall of anticipated revenues occurs, the Township of Mahwah will *[describe method of handling the shortfall of funds such as a resolution of intent to bond]*. A copy of the adopted resolution is attached.

***[COAH requires a municipality to pass a resolution of intent to bond or a resolution appropriating funds from general revenue for any unanticipated shortfall in a municipal rehabilitation program or municipal construction project.]***

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to *[describe type of housing activities]*.

## **6. BARRIER FREE ESCROW**

Collection and distribution of barrier free funds shall be consistent with the Township of Mahwah's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

***[Reference section of Affordable Housing Ordinance that explains the collection and distribution of barrier free funds.]***

## **SUMMARY**

The Township of Mahwah intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated *[insert date]*.

The Township of Mahwah has a balance of \$1,915,091.00 as of February 19, 2010 and anticipates an additional \$ *[insert total projected revenue]* in revenues before the expiration of substantive certification for a total of \$*[insert total of balance and projections]*. The municipality will dedicate \$ *[insert amount of revenue for housing activities]* towards *[insert types of housing programs]*, \$ *[insert amount of revenue for affordability assistance]* to render units more affordable, and \$*[insert amount of revenue for administrative costs]* to administrative costs. Any shortfall of funds will be offset by *[insert source of funds]*. The municipality will dedicate any excess funds toward *[insert types of housing programs]*.

<b>SPENDING PLAN SUMMARY</b>		
Balance as of December 31, 2008		\$
<b>PROJECTED REVENUE 2009-2018</b>		
Development fees	+	\$
Payments in lieu of construction	+	\$
Other funds	+	\$
Interest	+	\$
<b>TOTAL REVENUE</b>	<b>=</b>	<b>\$</b>
<b>EXPENDITURES</b>		
Funds used for Rehabilitation	-	\$
Funds used for New Construction		
1. <i>[list individual projects/programs]</i>	-	\$
2.	-	\$
3.	-	\$
4.	-	\$
5.	-	\$
6.	-	\$
7.	-	\$
8.	-	\$
9.	-	\$
10.	-	\$
Affordability Assistance	-	\$
Administration	-	\$
Excess Funds for Additional Housing Activity	=	\$
1. <i>[list individual projects/programs]</i>	-	\$
2.	-	\$
3.	-	\$
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>=</b>	<b>\$</b>
<b>REMAINING BALANCE</b>	<b>=</b>	<b>\$0.00</b>



**DRAFT**

**Governing Body Resolution Requesting Review and Approval of a Municipal Affordable Housing Trust Fund Spending Plan**

**WHEREAS**, the Governing Body of the Township of Mahwah, Bergen County petitioned the Council on Affordable Housing (COAH) for substantive certification on *(insert date)*; and

**WHEREAS**, the Township of Mahwah received approval from COAH on *[insert date]* of its development fee ordinance; and

**WHEREAS**, the development fee ordinance establishes an affordable housing trust fund that includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, proceeds from the sale of affordable units, and/or *[insert any other funds collected in connection with your municipality's affordable housing program]*;

**WHEREAS**, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from COAH prior to spending any of the funds in its housing trust fund; and

**WHEREAS**, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9;
5. A schedule for the expenditure of all affordable housing trust funds;
6. If applicable, a schedule for the creation or rehabilitation of housing units;
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and

8. A plan to spend the trust fund balance as of July 17, 2008 within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council;
9. A plan to spend and/or contractually commit all development fees and any payments in lieu of construction within three years of the end of the calendar year in which funds are collected, but no later than the end of third round substantive certification period;
10. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
11. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

**WHEREAS**, the Township of Mahwah has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46.

**NOW THEREFORE BE IT RESOLVED** that the Governing Body of the Township of Mahwah, Bergen County, requests that COAH review and approve the Township of Mahwah's spending plan.

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Kathrine Coletta  
Municipal Clerk

DRAFT

AN ORDINANCE OF THE TOWNSHIP OF MAHWAH TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

**Section 1. Affordable Housing Obligation**

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Township of Mahwah Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Township of Mahwah shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The Township of Mahwah shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Township of Mahwah Municipal Building, Municipal Clerk's Office, 475 Corporate Drive, Mahwah, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, [www.nj.gov/dca/affiliates/coah](http://www.nj.gov/dca/affiliates/coah).

**Section 2. Definitions**

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing,

plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH’s adopted Regional Income Limits published annually by COAH.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

### **Section 3. Affordable Housing Programs**

The Township of Mahwah has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

(a) A Rehabilitation program.

1. The Township of Mahwah’s rehabilitation program, in conjunction with the Bergen County Home Improvement Program, shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. The *[insert]* shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.

5. The Township of Mahwah shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Township of Mahwah.
6. The *[insert]* shall designate, subject to the approval of COAH, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
  - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.

Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

#### **Section 4. Reserved**

#### **Section 5. Reserved**

#### **Section 6. Reserved**

#### **Section 7. New Construction**

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

- (a) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
  1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
  2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.

3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
    - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
    - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
    - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
  4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- (b) Accessibility Requirements:
1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
  2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
    - i. An adaptable toilet and bathing facility on the first floor;
    - ii. An adaptable kitchen on the first floor;
    - iii. An interior accessible route of travel on the first floor;
    - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
    - v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
    - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Township of Mahwah has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
      - A. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.



- B. To this end, the builder of restricted units shall deposit funds within the Township of Mahwah's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
- C. The funds deposited under paragraph B. above shall be used by the Township of Mahwah for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Mahwah.
- E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Mahwah's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

- 1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- 3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
  - i. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.
- 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability

average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
  - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. **Utilities.** Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

#### **Section 9. Affirmative Marketing Requirements**

- (a) The Township of Mahwah shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 and covers the period of deed restriction.
- (c) *Optional. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 1 comprised of [insert counties].*
- (d) The Administrative Agent designated by the Township of Mahwah shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Mahwah.

#### **Section 10. Occupancy Standards**

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

1. Provide an occupant for each bedroom;
  2. Provide children of different sex with separate bedrooms; and
  3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

#### **Section 11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Township of Mahwah elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

#### **Section 12. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

### **Section 13. Buyer Income Eligibility**

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

### **Section 14. Limitations on indebtedness secured by ownership unit; subordination**

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

### **Section 15. Control Periods for Restricted Rental Units**

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Township of Mahwah elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election,

a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.

- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
  - 1. Sublease or assignment of the lease of the unit;
  - 2. Sale or other voluntary transfer of the ownership of the unit; or
  - 3. The entry and enforcement of any judgment of foreclosure.

#### **Section 16. Price Restrictions for Rental Units; Leases**

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

#### **Section 17. Tenant Income Eligibility**

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income

as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

#### **Section 18. Administration**

- (a) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Mahwah, including the following responsibilities which may not be contracted out to the Administrative Agent:
- i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
  - iii. When applicable, supervising any contracting Administrative Agent.
  - iv. Monitoring the status of all restricted units in the Township of Mahwah's Fair Share Plan;
  - v. Compiling, verifying and submitting annual reports as required by COAH;
  - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
  - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

- (b) The Township of Mahwah shall designate by resolution of the *[governing body name]*, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

**\*\*NOTE:** If it is decided that an employee of the municipality will act as administrative agent or if the Housing Affordability Service (HAS) of the Agency is selected, the determination of such can be included in this ordinance.

- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
  - 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
  - 2. Affirmative Marketing;
  - 2. Household Certification;
  - 3. Affordability Controls;
  - 4. Records retention;
  - 5. Resale and re-rental;
  - 6. Processing requests from unit owners; and
  - 7. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
  - 8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

#### **Section 19. Enforcement of Affordable Housing Regulations**

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner,



Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
    - i. A fine of not more than [*insert amount*] or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Mahwah Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
  2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within

the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

## **Section 20. Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

## **REPEALER**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

## **SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**EFFECTIVE DATE**

This ordinance shall take effect upon passage and publication as provided by law.



Introduced: July 13, 2006

Public Hearing: August 10, 2006

Effective Date: August 30, 2006

**TOWNSHIP OF MAHWAH**

**ORDINANCE NO. 1551**

**AN ORDINANCE AMENDING CHAPTER 24 OF THE TOWNSHIP MUNICIPAL CODE ENTITLED "ZONING" TO PROVIDE FOR THE APPOINTMENT OF A MUNICIPAL HOUSING LIAISON TO ADMINISTER THE TOWNSHIP'S AFFORDABLE HOUSING PROGRAM AND TO ENFORCE REGULATIONS PROMULGATED PURSUANT TO THE FAIR HOUSING ACT**

**BE IT ORDAINED** by the Township Council of the Township of Mahwah that Chapter 24 entitled "Zoning" of the Township of Mahwah Code Section 24-12 entitled "Housing Commission" is amended as follows:

- I. Subparagraph (b) shall be amended to delete "Municipal Welfare Director" and replace with "Human Services and Affordable Housing Director".
- II. Subparagraph (b) shall be further amended to add the following, "The Human Services and Affordable Housing Director shall serve as the Municipal Housing Liaison for the administration of the Affordable Housing Program and enforcing N.J.A.C. 5:94-7.1 *et seq.* and N.J.A.C. 5:80-26.1 *et seq.*"

**BE IT FURTHER ORDAINED** that the Township Clerk shall deliver a copy of this Ordinance to the Council on Affordable Housing within seven (7) days of adoption.

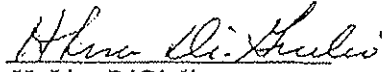
**BE IF FURTHER ORDAINED** that this Ordinance shall become effective after final passage, adoption and publication according to law.

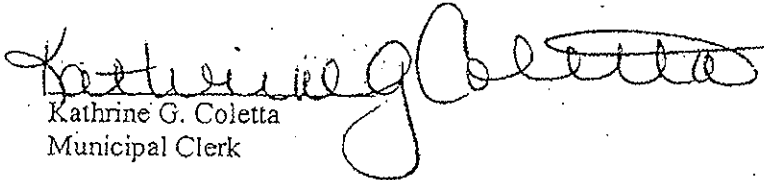
Ordinance No. 1551

Page 2

Date: 9/12/06

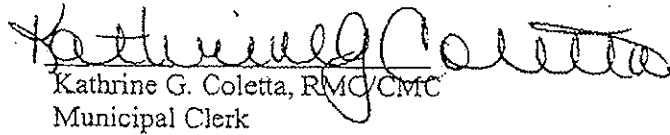
Attest

  
H. Lisa DiGiulio  
Council President

  
Kathrine G. Coletta  
Municipal Clerk

CERTIFICATION

I, Kathrine G. Coletta, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 10 day of August, 2006.

  
Kathrine G. Coletta, RMC/CMC  
Municipal Clerk

**RESOLUTION**  
**TOWNSHIP OF MAHWAH**  
 P.O. BOX 733  
 MAHWAH NJ 07430

Resolution #065-06A

Date: August 24, 2006

Name	Motion	Second	Yes	No	Abstain	Absent
Alderisio			X			
DaPuzzo	X		X			
Hermansen		X	X			
Kidd			X			
Larson			X			
Roth			X			
DiGiulio			X			

**CERTIFIED TRUE COPY***Katherine G. Coletta***TOWNSHIP CLERK****DATE: 8/28/06**

HEREAS, the Township of Mahwah was granted substantive certification of its Housing Element and Fair Share Plan by the Council on Affordable Housing (COAH) on July 1, 1998; and

HEREAS, the Township of Mahwah's Fair Share Plan promotes an Affordable Housing program pursuant to the Fair Housing Act (NJSA 52:27D-301, et. seq.) and COAH's Third Round Substantive Rules (NJAC 5:94-1, et. seq.); and

AND WHEREAS, pursuant to NJAC 5:94-7 and NJAC 5:80-26.1 et. seq., the Township of Mahwah is required to appoint a Municipal Housing Liaison for the administration of the Township of Mahwah's Affordable Housing Program to enforce the requirements of NJAC 5:94-7 and NJAC 5:80-26.1 et. seq.; and

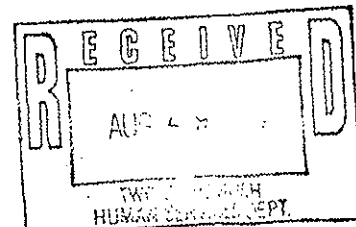
HEREAS, the Township of Mahwah has amended the Township Code Section 24-12 entitled Housing Commission to provide for the appointment of a Municipal Housing Liaison to administer the Township of Mahwah's Affordable Housing program.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Township of Mahwah in the County of Bergen and the State of New Jersey that Dolores Raiz is hereby appointed by the Governing Body of the Township of Mahwah as the Municipal Housing Liaison for the administration of the Affordable Housing Program, pursuant to and in accordance with Sections 24-12 of the Township of Mahwah's Township Code.

Whereby certify that this resolution consisting of one page(s), was adopted at a meeting of the Township Council of the Township of Mahwah, 24th day of August, 2006.

*Katherine G. Coletta*  
 Katherine G. Coletta  
 Municipal Clerk

*H. Lisa DiGiulio*  
 H. Lisa DiGiulio  
 Council President







**RESOLUTION APPROVING the MUNICIPAL HOUSING LIAISON  
of the Township of Mahwah, County of Bergen**

**WHEREAS**, the Township of Mahwah was granted second round substantive certification of its Housing Element and Fair Share Plan by the Council on Affordable Housing (COAH) on July 1, 1998; and

**WHEREAS**, the Township of Mahwah's Fair Share Plan promotes an affordable housing program pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.) and COAH's Second Round Substantive Rules (N.J.A.C. 5:93-1, et. seq.); and

**WHEREAS**, pursuant to N.J.A.C. 5:93-11.2 and N.J.A.C. 5:80-26.1 et. seq., the Township of Mahwah is required to appoint a Municipal Housing Liaison for the administration of the Township of Mahwah's affordable housing program to enforce the requirements of N.J.A.C. 5:93-11.2 and N.J.A.C. 5:80-26.1 et. seq.; and

**WHEREAS**, on August 10, 2006 the Governing Body of the Township of Mahwah adopted Ordinance # 1551, to provide for the appointment of a Municipal Housing Liaison to administer the Township of Mahwah's affordable housing program (attached herewith as Exhibit A); and

**WHEREAS**, on August 24, 2006 the Governing Body of the Township of Mahwah adopted Resolution # 065-06A (attached herewith as Exhibit B), appointing Dolores Raiz as the Municipal Housing Liaison for the administration of the affordable housing program, pursuant to and in accordance with Ordinance # 1551;

**WHEREAS**, Dolores Raiz has successfully completed Module I COAH Training for Municipal Housing Liaisons; and

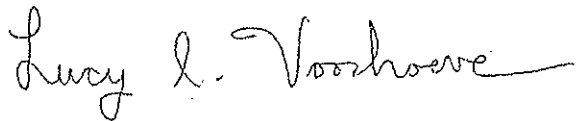
WHEREAS, COAH has reviewed the ordinance and adopted resolution for compliance with N.J.A.C. 5:93-11.2 and N.J.A.C. 5:80-26.1 et. seq., and has determined that the appointment of Dolores Raiz complies with all requirements set forth in these sections.

NOW THEREFORE BE IT RESOLVED, that COAH hereby approves Dolores Raiz as the Municipal Housing Liaison for the administration of the affordable housing program in the Township of Mahwah; and

BE IT FURTHER RESOLVED, that Dolores Raiz will attend any necessary continuing education opportunities provided or required by COAH; and

BE IT FURTHER RESOLVED, that should Dolores Raiz cease to be employed by the Township of Mahwah or cease to fulfill the duties of municipal housing liaison as prescribed, the Township of Mahwah shall be required to appoint a municipal housing liaison subject to COAH's approval.

Date: June 26, 2007

A handwritten signature in cursive script, reading "Lucy L. Voorhoeve". The signature is written in dark ink and is positioned above the printed name and title.

Lucy Voorhoeve  
Executive Director  
Council on Affordable Housing